

# SELECTED CRIMINAL ISSUES

INITIATIVE 502

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- **State** law will no longer prohibit possession of less than one ounce of marijuana by persons over the age of 21 years. Section 20 (Amending 69.50.4013)
- Until approved by Liquor Control Board there will be no lawful way to obtain recreational marijuana.

# DELIVERY AND MANUFACTURE

- Until lawful manufacture and dispensation approved by Liquor Control, illegal under state law.
- Definition of marijuana will require proof of THC content greater than three-tenths of one percent by dry weight.
- Labs will be able to set up this testing.

# DUI

- New per se marijuana limit of 5 nanograms per milliliter of whole blood.
- Labs can currently test for the level of active THC.
- ZERO TOLERANCE FOR MINORS

# DUI ISSUES

- THC level within 2 hours of driving
- No retrograde currently available
- Be aware of any consumption prior to blood test

# DUI ISSUES

- DUI marijuana enforcement is not new – the per se level is new.
- DUI marijuana for minors is new – and very much an expansion of the current law.

# DUI-Drug

- Officers should follow their current training related to impairment.
- DUI-Drug has been the law in Washington for years.
- Arrest for physical control or DUI requires evidence of impairment.
  - Blood test authorized under the implied consent statute when there is probable cause to believe that the offender is under the influence of a drug.

# New “Per Se” Marijuana Alternative Means

- I-502 adds a new “per se” alternative means of committing DUI and physical control
  - Existence of this alternative will only be known after blood results are received
  - When marijuana is believed to be “on board” and a blood test is obtained, it is probably best to leave the charging decision to the prosecutor



# Under 21 Zero Tolerance

- New crime for people under the age of 21.
- Offense requires:
  - Driving or in physical control of vehicle
  - THC concentration above 0.0
- Offense must occur in the officer's presence.  
Does not fall within RCW 10.31.100's  
misdemeanor exception rule.

# Under 21 Zero Tolerance

- Must have individualized probable cause that the driver consumed marijuana. Odor of marijuana in vehicle is insufficient. (State v. Grande, 164 Wn.2d 135 (2008)).
- Must use new implied consent warnings.
- Cannot be charged until blood results are received back from the laboratory

# SYMPTOMS

- Make sure the symptoms (e.g odor of marijuana) can be tied specifically to the driver, particularly if pursuing zero tolerance with a minor
- Reaction time, odor, marijuana debris in mouth or on person, poor FSTs, bloodshot eyes, eyelid tremors, etc.
- HGN/VGN not present

# DRAWING BLOOD

- OFFICER PHLEBOTOMISTS?
- JAIL/CENTRAL LOCATION?
- VIALS WILL WORK CHEMICALLY
- SOONER THE BETTER – 3 HOUR DISSIPATION  
AND AVOID POST DRIVING CONSUMPTION?

# DOG ISSUES

- DO NOT FIRE FIDO
- Positive alerts still relevant: Think odor of alcohol
- Train new dogs without marijuana recognition
- We need cautionary language on search warrant applications explaining the relevance and limitations of current dogs

# PUBLIC CONSUMPTION

- Infraction to display or use in public
- No Terry stop authority?
- Probable cause to cite?
- No arrest authority?

# Open Package Infraction

- Section 21 of the Initiative:  
“It is unlawful to open a package containing marijuana, useable marijuana, or a marijuana-infused product, or consume marijuana, useable marijuana, or a marijuana-infused product, in view of the general public. A person who violates this section is guilty of a class 3 civil infraction under chapter 7.80 RCW.”

# Rules Related to Non-Traffic Infractions

- No *Terry* stops for non-traffic infractions. (*State v. Duncan*, 146 Wn.2d 166 (2002)).
- A police officer may only issue a notice of infraction if the offense occurs in the officer's presence. (RCW 7.80.050).
- Offender may only be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction. (RCW 7.80.060). Offender may not be detained while the officer waits for a return on a warrant check. (*State v. Rife*, 133 Wn.2d 140 (1997).)